



## NEWS RELEASE

For Immediate Release:  
August 29, 2003

Contact: Sigrid Bathen  
(916) 322-7761

### **McClintock ballot pamphlet suit rejected by appeals court** ***FPPC says candidate elected not to abide by voluntary limits***

A lawsuit filed by state Sen. Tom McClintock (R-Thousand Oaks) -- a candidate for governor in the Oct. 7 recall election whose candidate statement may not be included in the ballot pamphlet because he did not elect to abide by voluntary expenditure limits on a required campaign form -- was rejected by the 3<sup>rd</sup> District Court of Appeal Thursday. McClintock's lawyers appealed that ruling today (Aug. 29) to the California Supreme Court.

Printing of the ballot pamphlets is scheduled to begin Sunday. McClintock sued Aug. 12 to require the Secretary of State to publish McClintock's ballot pamphlet statement despite his not having agreed to abide by the expenditure limits in the recall election. McClintock claimed the earlier refusal to abide by the limits (a selection made on his Form 501) was "in error" and tried to amend that form.

The Secretary of State refused the proposed amendment based on advice by the Fair Political Practices Commission, which interpreted section 85401(b) of the Political Reform Act to allow amendment in just one limited circumstance not present in this case. McClintock sought a writ of mandate from Sacramento Superior Court requiring the Secretary of State to publish his statement, alleging certain provisions of Proposition 34 were unconstitutional infringements of various rights, such as free speech and the right to run for office.

The FPPC, though not named as a respondent in the petition by McClintock, successfully intervened in the matter earlier this week, on Aug. 25, and filed a brief the same day -- defending Proposition 34 and the FPPC's interpretation of the law. The judge held a hearing the next day, and on Aug. 26 agreed with the FPPC and dismissed McClintock's petition. In its brief and in oral arguments, the FPPC argued that the limited circumstances for changing a candidate's statement of intention with regard to expenditure limits was a reasonable and critical component supporting broader important policy considerations:

- Restricting amendment avoids possible strategic gamesmanship by candidates who might attempt to mislead other candidates on this important issue by making last minute changes. This is avoided by preventing changes while other campaigns are formulating strategies based on the express declarations of other candidates' intent regarding expenditure limits.

-more-

- It promotes stability in the process by setting the layout early in the process under which the election will take place.
- It reduces confusion of both voters and candidates as to whether in fact a given candidate is going to abide by the limits.
- 130 other candidates made their selections *after* McClintock. For a court to allow an amendment for him at the last minute is unfair to all the other candidates, and could lead to havoc in the last days before the mailing of the ballots if other candidates determine their initial selection regarding limits was also in error.

McClintock then petitioned the 3<sup>rd</sup> District Court of Appeal in Sacramento -- later on the same day as the Superior Court ruling. The appellate court rejected the petition on Thursday, Aug. 28, on the grounds that the petition lacked supporting documents showing a valid attempt to amend the Form 501. McClintock then returned to Superior Court, seeking reconsideration on the earlier denial on the basis that he had found a copy of the form that should have been attached. McClintock also filed additional legal documents with the appellate court seeking its reconsideration.

Both requests of the courts were denied.

McClintock's attorneys, today (Aug. 29), filed a request for an emergency stay with the Supreme Court, asking that publication of the voter pamphlet be delayed.

McClintock is represented by attorney Richard D. Ackerman of the Temecula, Calif., firm of Lively, Ackerman & Cody. Handling the case for the FPPC is Commission Counsel Scott Tocher and General Counsel Luisa Menchaca. The Secretary of State's office is represented by the state Attorney General's office.

The FPPC has issued three advice letters on this subject, including one to the Secretary of the State specifically regarding the McClintock matter.

**A copy of the FPPC's opposition brief detailing the agency's reasons for opposing McClintock's request for an emergency stay is available on the agency website at [www.fppc.ca.gov](http://www.fppc.ca.gov). Go to "litigation" on the website, or call the press office at 916-322-7761.**

###